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Fifty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1229th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 August 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eleventh to fourteenth periodic reports of Argentina (continued)

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1229/Add.1.

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eleventh to fourteenth periodic reports of Argentina (continued) (CERD/C/299/Add.11; HRI/CORE/1/Add.74)

1. At the invitation of the Chairman, the members of the delegation of Argentina took their places at the Committee table.

2. Mr. van BOVEN expressed his appreciation of the report and his hope that the next report would be submitted on time. He associated himself with Mr. de Gouttes' comments.

3. The highly focused attention given in the report and by the Committee to the indigenous peoples was fitting, to the extent that it reflected a major concern of the Committee, which was about to adopt a general recommendation on the subject. Although the size of the indigenous population was very small, the issue invited concern if only on account of the historical reasons that had led to the dwindling numbers.

4. He commended the amendment to the National Constituent Convention referred to in paragraph 17 of the report which expressly recognized the existence of the indigenous peoples prior to the formation of the Argentine State.

5. Despite the extensive discussion of the issue of land and measurement of large tracts of land for restitution to the indigenous peoples, he wished to know which areas of land were to be returned and safeguarded, since the question remained as to the quality of the land and the extent to which the indigenous population had been consulted on the matter.

6. Through personal contact with indigenous groups in Argentina, he had heard allegations that they had been tricked into fraudulent arrangements depriving them of their property rights and leaving them destitute after the courts had failed to serve them justice. There was therefore a need to examine the role of the judiciary in its duty to restore justice denied.

7. He asked whether the Argentine Government had already ratified or planned to ratify ILO Convention No. 169, which dealt specifically with the rights of indigenous and tribal peoples.

8. The Committee had listened with interest to the mandate of the newly-formed National Institute to Combat Discrimination, Xenophobia and Racism (INADI) and looked forward to hearing more about its activities in the next report, for instance whether it was an independent body and was allocated a secured budget.

9. Regrettably, the report had not shed any further light on the terrorist attack against a Jewish organization in Buenos Aires in 1994, and the Committee noted that the lack of any indication of progress in the investigations had given rise to grave concern in Argentina. It was hoped that the next report would correct that situation.

10. He attached great importance to the need for States to make the declaration under article 14 of the Convention and accept the amendment to article 8, paragraph 6 and reiterated the suggestion that the report and concluding observations be publicized in Argentina.

11. Mr. AHMADU requested clarification of the nature of the Constitution, and specifically whether it was unitary, federal or confederal, because it seemed to have elements that were unitary and federal but lacked any confederal characteristics.

12. He asked what exact inferences could be drawn from the statement that Roman Catholicism was the main religion and was protected by the State. Was it the official religion and how and why was it protected?

13. Whereas the question of the admittedly few Argentines of African extraction had been dealt with in previous reports of Argentina in connection with the Argentine Government's position on apartheid - which, it was to be remembered, had not been an obstacle to warm South African-Argentine relations - he wondered what had become of Argentines and immigrants of African descent who had been victims of discrimination in the past. Had they since acceded to administrative positions and prominent positions in fields other than football and boxing? What was their status vis-à-vis the indigenous population, who benefited from commendable efforts on the part of the Government? The practice in Latin America was to include indigenous people from other continents in the category of local indigenous peoples but the question remained whether they were treated as well.

14. He wondered whether equality under the law extended to those who, for one reason or another, enjoyed immunity. Did it mean that equality before the law began only after immunity had been lifted?

15. He asked whether persons of African or Middle-Eastern origin benefited from the liberalization of Argentina's immigration policy and whether they were among those whose immigrant status had been legalized. Although apartheid in its institutional form had disappeared, it might be asked whether elements of the philosophy persisted and whether racist crimes other than acts of anti-Semitism were being prosecuted.

16. The question of equal treatment for religious groups also required clarification, in particular with respect to Muslims, and whether the bill before Congress entitling them to paid religious holidays had been passed.

17. Finally, he expressed some misgivings about what appeared to be an excessive number of institutions and bodies dealing with the issues under discussion.

18. Mr. SHAHI said that the impressive report reflected Argentina's serious approach to its dialogue with the Committee. The measures being taken to restitute land to the indigenous communities, albeit belated, were welcome and in full accord with the Committee's position that the question of land was inextricably bound up with the culture, existence and livelihood of the indigenous communities.

19. In view of the distribution of land that had taken place so far in Formosa province, the members of indigenous communities stood to receive very generous land grants that might prove disproportionate to their share of the total population. Furthermore, it was not clear whether the land was to go exclusively to the Pilagá people, assuming from the statistics in the report that they were the only indigenous people living in the area, or whether other indigenous communities were also to benefit from the measure.

20. Mrs. SADIQ ALI read from an article taken from a 1996 issue of the Indigenous Affairs journal of the International Work Group for Indigenous Affairs reporting on the organized efforts of the indigenous peoples of Argentina at the regional level to prevent the execution of the joint Argentina-Paraguay Hidrovia project. They believed that the project could lead to an ecological catastrophe similar to the famine and drought experienced after the diversion of the Pilcomayo river and should not be started without prior in-depth study. The indigenous people of Argentina sought legal recognition of their claims to land and protection of the ecology and biodiversity of their habitat. Their claims to land that had been expropriated from them were accompanied by a proposal that any subsequent restitution should be commensurate with their proportion to the rest of the population in the area. The outcome of their peaceful protest had been a meeting with Government Minister Torino in September 1996. Further clarification of the present position of the Government with respect to the territorial claims in Gran Chaco as well as its decision on the Hidrovia project would be welcome.

21. Mr. BENITEZ (Argentina) pointed out that the discrepancy between the figures on the land areas and the indigenous peoples in the current report and those given during the presentation of the report was due to the fact that the latter figures were updated statistics provided at Mr. de Gouttes' request. Sizeable tracts of desirable land had been earmarked for restitution to indigenous peoples; with the public attention that the issue had attracted, there might well be a sudden unprecedented swelling of the ranks of the indigenous peoples.

22. In answer to queries on the status of human rights conventions in Argentine law and the order of precedence of the normative provisions of human rights instruments as well as whether they were self-executing, he said that jurisprudence had shown that such rights could be invoked independently of any ancillary laws in which they might be incorporated. Ratification of human rights treaties or conventions by the Argentine Government automatically gave them legal, autonomous and independent validity above and beyond the laws of the country. In the event of conflict, the convention automatically took precedence over domestic law. In the event of conflict between a provision in a convention or treaty and the Constitution, the latter, as the supreme body of law, took precedence. The Supreme Court had, however, ruled that there could be no conflict between the principles enshrined in the convention and a constitutional law or a domestic law, which by constitutional definition enjoyed a lower order of precedence than human rights conventions.

23. Instituting proceedings under amparo was by way of a very simple, brief procedure which had been transposed without any changes into the new Constitution from the old. A person claiming that his constitutional right

had been infringed would have to be heard by a judge, following which the judge would pronounce whether there had been violation or denial of a constitutional right. The procedure enabled judges to determine, expeditiously whether the person bringing the claim had the legal personality required to institute proceedings and whether the right had indeed been violated. The remedy could be sought also in cases of discrimination. Such cases were the only ones in fact in which domestic law might interfere in the constitutional implementation of a human rights convention. It had therefore been recognized that jurisprudence would have to be updated and a change in the attitudes of judges who dealt with that kind of case would have to be sought. To that end, seminars were being conducted for and assistance provided to judges in an effort that included cooperation with other Latin American countries to revise the role of judges in their application of international conventions. It went without saying that the indigenous peoples enjoyed the same right to amparo as any other Argentine.

24. The term "inhabitants" (habitantes) as used in the Constitution had evolved and, in respect of non-discrimination and human rights guarantees, encompassed all persons on Argentine soil.

25. As to the reference to prerogatives of blood or birth in paragraph 5 of the report, it was to be understood that it was rooted in the historical context of Argentina during the time when it had still been part of the kingdom of Spain, when the main forms of discrimination in Argentina had been for reasons of blood or birth. The provision had been introduced in preparation for independence.

26. Regarding the recognition of indigenous communities as legal entities, he explained that under the Argentine system, in order for legal entities to act in a legal capacity, certain procedures were necessary to distinguish them from physical persons. Because of the indigenous communities' different tradition, it had been necessary, in order for them to act collectively and as legal entities, to effect a series of legal reforms and to establish them as legal entities without following the requirements of prior legislation.

27. As to the phrase "religious communities of some consequence", the criterion of "reasonableness" was used to determine which religious communities would be recognized, on the basis of how many adherents they had and what their influence was on other spheres of life. That criterion had a long tradition in international administrative law, as well as in Argentine law, and was intended to ensure that administrative acts were not disproportionate to the legal value they were supposed to be preserving.

28. Regarding the functioning and independence of judiciary, and the problem of statistical information, the Government acknowledged there were shortcomings. It was costly to computerize the legal system, but the process was under way. There were also ongoing projects to facilitate the development and updating of the Argentine body of law in view of the immediate implementation of the international human rights instruments, to which the Centre for Human Rights had contributed.

29. As to the question of provincial and federal competence, the Constitution was a federal one. The provinces had existed before Argentina

came into being as a nation, and 50 years of bloody internal struggles during the nineteenth century over whether a confederation or a unitary State would prevail had led to the triumph of the federal concept. That polemic or dialectic had led to a distinction between the powers delegated by the provinces to the State and the powers vested in the provinces. Lands were not delegated, but belonged to the provinces.

30. There was a liberal current of thinking in Argentina, one that recognized freedom of religion and the equality of religious communities. Although Catholicism had formerly enjoyed constitutional protection, it was not a State religion, and the 1994 reform had removed the requirement that the President had to be Catholic and had allowed those swearing an oath to do so on the Constitution instead of on the Bible.

31. In Argentine case law, racist motivation was considered to be an aggravating circumstance for acts covered by other types of offences, and was not an offence in its own right. Act No. 23,592 of 1988, concerning discriminatory acts, had established a different regime for civil liability for acts committed out of racist motivation. However, the types of offences set forth in the Constitution were covered by the classification of offences under Argentine penal law, and there had never been any case of failing to comply with the Convention in that respect.

32. Racist organizations were indeed prohibited from demonstrating; their acts could constitute minor offences against the anti-discrimination act, whereby they could incur penalties or be liable for compensation, or could constitute more serious offences and be prosecuted as violations of one of the human rights covered in the international instruments. Examples of specific cases would be provided later.

33. With regard to the active and passive electoral rights of foreigners, in some municipalities they could stand for election; there was no distinction between native-born and naturalized Argentine citizens, except for candidates for the presidency, who had to have been born in Argentina, which was a long-standing tradition in Latin America. Anyone standing for election to any office had of course to be a resident.

34. He had no further information on Argentina's intention to make a declaration under article 14 of the Convention.

35. Regarding the archives on Nazi criminals, which had been opened in 1993, the suspicion existed that Argentina had allowed a large number of Nazis into the country following the Second World War, and the Government had decided to lend its full support to shedding light on its conduct at that time. Initially, there had been an administrative act ordering the opening of the archives but the situation had proved much more complicated and required more resources and effort than had originally been thought necessary. That was because of the state of the archives, the amount of time that had elapsed, and a series of administrative shortcomings. The archives were piled up in different locations and had never been catalogued or computerized; the task was enormous. It also involved the individual's right to privacy; and to open a file marked "secret" or "confidential" presented administrative problems. To resolve those problems and fulfil the Government's commitment, a commission

had been established within the Ministry of Foreign Affairs, which had spent more than a year working with experts from Israel and the United States. The commission was continuing its work, with additional support from both the private and public sectors.

36. Mr. PLORUTTI (Argentina) said that, although ILO Convention No. 169 concerning indigenous and tribal peoples had been approved by Parliament, it had not yet been ratified. The Government was still determining how its application would function within the domestic legal system, as there had been some problems and no unanimity on the subject. The Convention had been ratified by only eight States to date; it was encountering great resistance. Argentina had wished to make certain reservations to the Convention, but that process was not allowed. However, the Government did not foresee any obstacle to its future ratification.

37. Mr. BENITEZ (Argentina) said that Convention No. 169 was one of the current topics of debate by the ILO on the strengthening of monitoring mechanisms of eight fundamental ILO conventions, which dealt with the principles of discrimination, forced labour, child labour, and freedom of negotiation and trade union freedom. The ILO was trying to reach an agreement on those principles and the strengthening of those mechanisms, independently of the conventions themselves. Argentina had favoured a declaration on the fundamental rights of workers and expanding the scope of the mechanisms. It might, however, take an additional one or two years to conclude the debate.

38. Mr. PLORUTTI (Argentina) said the 1994 and 1992 attacks on the Argentine Jewish organization and Israeli Embassy in Buenos Aires constituted acts of international terrorism that had affected Argentine society as a whole. Investigations of those events, and of a possible connection between the two, were under way and were a priority of the Government; eventually one judge might be assigned to both cases. The possibility of closing the case involving the Israeli Embassy had never been contemplated. The slow pace of the investigations was due to the complexity of the cases; the Argentine legal system functioned freely and efficiently, and was not in question.

39. Two of the five cases involving profanation of Jewish cemeteries had been solved and the perpetrators sentenced; investigations continued into the three other cases. Following the 1988 anti-discrimination act, the number of anti-Semitic publications had been significantly reduced.

40. Regarding the problem of migration, according to the Parliamentary Information Office, 147 legislative drafts had been received. One draft had been criticized by the Catholic and Protestant Churches and other organizations for its language on the compensation of foreign workers, but it had been put forward, not by the Executive, but by Socialist deputies, and had subsequently been withdrawn.

41. The European Parliament had submitted a draft resolution on the problems of indigenous persons in the San Andrés plantation of Las Collas and on the Mapuches in Pulmarí. The draft, which was under study, would be submitted to the plenary in September 1997, and the Government was constantly providing information on the topic to the Argentine mission in Brussels.

42. Act No. 24,757 of 20 December 1996, which had been adopted since the drafting of the fourteenth periodic report, had proclaimed three paid religious holidays for Muslims.

43. As to whether either the national Ombudsman or the Ombudsman of Buenos Aires had submitted any cases of discrimination, only one such case had been found, in which it had been recommended that the Municipality of Buenos Aires should penalize acts considered to be in violation of article 5 (f) of the Convention. The case had involved allegations that some discotheques were barring entry to youths with particular racial traits, although what those traits were was not known.

44. Mr. BENITEZ (Argentina) said that case demonstrated clearly that the Ombudsman had applied the Convention, which he had cited rather than any national law.

45. Mr. PLORUTTI (Argentina) said that the phrase "urgent action" referred to actions constituting an immediate response to discriminatory acts; it apparently had a different meaning in Argentina from what it meant in European administrative procedures. There were no reports of such cases, but more information would be furnished in the next report as to whether it was being applied or not.

46. The National Institute to Combat Discrimination, Xenophobia and Racism (INADI), within the Ministry of the Interior, had replaced the pilot National Anti-Discrimination Programme and reported directly to the Minister.

47. The Refugee Eligibility Committee (CEPARE) was composed of immigration officials and of representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Foreign Ministry. It was currently compiling statistics, but UNHCR estimated there were some 12,000 refugees in Argentina. That figure could not be corroborated, however, as refugees were under no obligation to report on changes in their residence status; they could acquire citizenship once they had fulfilled the same requirements as any other foreigner residing in Argentina. The average number of requests for a change in status was 18 per month; more than 90 cases had been considered as of March 1997, of which 75 had been resolved. He had no information on cases whose validity had not been recognized by CEPARE, although several appeals had been resolved by the Office of the Under-Secretary for Human and Social Rights.

48. Mr. BENITEZ (Argentina) said that, with regard to the Lao repatriates, a UNHCR committee was working with the Argentine Catholic Commission for Migration to find the appropriate conditions and location for their repatriation; it was not an economic problem.

49. Mr. PEREDA (Argentina) said that the 1994 amendments to the Constitution had marked a radical change in the rights of indigenous peoples. The previous version, dating from 1853, had merely called upon Congress to maintain peaceful relations with the Indians and to promote their conversion to the Roman Catholic religion. The amendments had been adopted as a result of extensive lobbying by indigenous peoples who now, for the first time, had an official special status and were being registered.

50. He had brought a copy of resolution 48/11 of the Secretariat for Social Development for members to consult. The resolution was a crucial one which showed how minority rights were being protected in Argentina. ILO Convention No. 169 had been incorporated into Argentine law in Act No. 24,071.

51. Members had asked about the participation of indigenous peoples in public institutions. There were many different tribes and indigenous peoples in Argentina, living in scattered and remote settlements. It was therefore extremely difficult for them to make their views known and to participate in public institutions. The National Institute to Combat Discrimination, Xenophobia and Racism (INADI), of which he was the Director, had begun a programme of consultation with indigenous peoples, with a budget of US$ 500,000. A regional meeting was to be held in Buenos Aires at the end of August, in which indigenous peoples were invited to propose changes to the law concerning bilingual education, land use and natural resources as it affected them, as well as the work of the Institute.

52. Mrs. Sadiq Ali had asked about consultation with indigenous communities about the proposed Hidrovia project. A meeting had taken place in June 1997, in which communities had been consulted about the possible impact of the new project on their lives.

53. Another question had concerned the transfer of 400,000 hectares of land to indigenous communities in Formosa province. That had been a pioneering step in Argentine legislation, but it had happened five years before, so it had not been considered necessary to mention it in the report. Also, the decision had been made by a provincial government rather than the central Government. The Government paid for land surveys carried out to determine how much land should be transferred to the indigenous community. Three other agreements had been concluded so far in the provinces of Jujuy, Santa Fe and Misiones.

54. The Institute carried out preparatory work in the community before land was transferred. The indigenous communities in each area were registered as legal personalities and the land they claimed was accurately measured. There might be inconsistencies in the information which the delegation had given the Committee, owing to a failure to include either earlier transfers, or land which had not yet been handed over, but where the preparatory work he had just mentioned was under way.

55. As a result of the constitutional reforms, new regulations were needed to govern the transfer of land into communal ownership and to ensure that it was not "alienable, transferable, or subject to lien or distraint" in accordance with the new provisions of the Constitution. It was a historic exercise of reparation for the injustices committed in the name of the old 1853 Constitution and was evidence of the Argentine Government's recognition of the multicultural and multiethnic nature of Argentine society.

56. Members had asked about a land claim on the San Andrés estate in Salta province. The estate had been claimed by indigenous people, but no land transfer was possible as yet because the case was still the subject of legal proceedings. The claims of the indigenous communities concerned were always taken fully into account in accordance with the law. Another land claim on the Santiago estate had been approved, and the actual transfer would take

place in the next two years. Another group of communities which did not currently benefit from the Institute's indigenous people's programme was currently in consultation with the World Bank and other interested institutions. The results of the consultations would help to determine the representation of indigenous people on Argentine and international bodies.

57. A great deal of work had been done in the field of education for indigenous peoples in El Sauzalito and Impenetrable. One school had risen to third place in the province in the subjects of mathematics and language comprehension because of the extra teaching assistance which had been provided in school. Other programmes for indigenous schoolchildren were being developed in Formosa and Salta provinces and in Patagonia. Education was the responsibility of the provincial government: the Institute was drawing up agreements with the provinces to ensure that indigenous children had access to bilingual and multicultural education. However, there were not enough trained teachers from the indigenous community, and the Institute was providing support for secondary and university students in order to increase the supply of trained indigenous teachers in the next few years. A teacher training college had already been set up for teachers from the Toba and Mocoví peoples, and the first teachers would graduate soon.

58. Mrs. Zou Deci had asked about health provision for indigenous people. Argentina's primary health-care system covered the whole country, and health auxiliaries who spoke indigenous languages had been employed in the provinces of Chaco, Salta, Formosa and Misiones. Health care was the responsibility of the provinces, although the national Government provided resources and incentives to help indigenous people.

59. Mr. BENITEZ (Argentina) said that economic and social statistics and information on problems such as drug addiction, child prostitution and street children had not been included in the report because they did not seem directly relevant to racial discrimination.

60. Mr. van Boven had asked about cases where indigenous peoples had been tricked into giving up their legitimate property rights. Cases of that kind had been dealt with under the Argentine Civil Code then prevailing, for instance the provision which stated that a deal concluded when one of the participants was under the influence of alcohol was not valid in law. No information had been provided because they did not seem to be cases of racial discrimination.

61. He thanked the Committee for the interest it had shown in Argentina's report and the pertinent questions which members had raised.

62. Mr. WOLFRUM thanked the delegation for its replies and hoped that more information on a number of points would be included in the next periodic report. Paragraph 17 of the report quoted the revised Constitution, describing the new rights enjoyed by indigenous populations, but how had the new provisions changed the situation of indigenous peoples in practice?

63. He would welcome more information about the delegation's statement that all judges were independent. In particular, which authority was responsible for appointing judges, and who had the power to dismiss them?

64. He asked for more information and statistics about the economic and social situation of indigenous peoples, which would give some idea of their position in Argentine society. It would also be useful to know how their situation was changing as a result of the recent reforms.

65. Although the delegation had stated that, in the past, land transfers to indigenous people had not been recorded, some indication of how many there had been would be helpful to the Committee, as would more details of the preparatory work carried out by the Government among indigenous peoples before land was transferred.

66. Mr. ABOUL-NASR asked for copies of two texts mentioned by the Argentine delegation - the first being the declaration on indigenous peoples and the second the legislation on anti-Semitism.

67. Mr. SHERIFIS thanked the Argentine delegation for its cooperation. He hoped that more information on the restitution of lands to indigenous peoples would be included in the next periodic report.

68. Mr. de GOUTTES (Country Rapporteur) thanked the Argentine delegation for its report, its introductory statement and its replies to members' questions. The delegation had emphasized the unique nature of the land transfers which had been undertaken in reparation for the injustices of the past.

69. He hoped that the following points would be covered in more detail in Argentina's next periodic report. He hoped to hear more about the consequences of the measures taken to improve the situation of indigenous peoples, particularly those concerning land ownership. He would also welcome more information about the implementation of the National Anti-Discrimination Programme of the Ministry of the Interior, particularly any urgent measures which were being taken. Another area of interest was the role of the Ombudsman in the prevention of racial discrimination.

70. He asked for the text of the provisions of the Penal Code which implemented article 4 of the Convention and for other relevant legal statistics, including the number of complaints made to the National Institute to Combat Discrimination, Xenophobia and Racism and the measures taken against racist organizations.

71. He would further like to hear about the role of the judicial authorities and of any difficulties encountered in the operation of the judicial system, particularly if they had implications for cases involving indigenous peoples.

72. Finally, he would like to hear more about the human rights training given to law enforcement officers and steps taken to familiarize them with the provisions of the Convention.

73. The CHAIRMAN thanked the Argentine delegation for its participation in the dialogue with the Committee, which he hoped would continue. The Committee had thus completed the first stage of its consideration of the eleventh to fourteenth periodic reports of Argentina.

The public part of the meeting rose at 12.15 p.m.